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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, *Petitioner*,

v.

THE UNITED STATES OF AMERICA EX REL.
CHESTATEE PYRITES & CHEMICAL CORPORATION.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR RESPONDENT.

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MARION SMITH,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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This reply to petitioner's brief is intended merely to furnish the court a convenient reference to the pages in the transcript from which the facts actually presented by this case can be determined. It will appear from them that the brief of petitioner seeks to sustain decisions which the Secretary of the Interior has never made.

Under the Act of 1929 the only function of a court under this proceeding is to review rulings of law by the Secretary.

I.

The decision actually made by the Secretary is in writing and shown by the report of Asst. Commissioner Briar afterwards adopted in writing by the Secretary.

(a) Briar's report, Transcript 12-23.

(b) Secretary Falls adoption of this report as his decision, Transcript 23.

(c) This action affirmed and adopted by present Secretary.

(1) In original response, Transcript 4.

(2) By stipulation making exhibits part of record, Transcript 6.

(3) By second response, Transcript 9 and 11.

(4) Last response shows no decision contrary to that of Secretary Fall, Transcript 28.

II.

As to salaries of executive officers the only decision made by the Secretary is that no salaries could be paid officers who were also stockholders. This is purely a question of law. No question of the reasonableness of salaries actually paid has ever been raised by the Department.

(a) Plan of accounting adopted by the Department was to treat the corporation as organized for and engaged only in carrying out the Secretary's plan of producing war minerals. This was in fact the case. Hence the Department first set up all disbursements in period and then deducted those which it refused to allow, Transcript 14.

(b) Salaries were deducted because Department held as matter of law a stockholder could not draw a salary, Transcript 23.

(c) This position re-asserted in second response, Transcript 26.

(d) No question of reasonableness of salaries has ever been raised. Actually salaries paid were very reasonable. The service covered 508 working days, Transcript 10. Hence the salary of each executive for managing a million dollar enterprise was about $750.00 per month.

III.

As to purchase of property the Secretary first held that this should be deducted because no compensation could be paid for losses growing out of purchase of property. Transcript 21.

Since the Vindicator decision the Secretary has said in his last response that this is disallowed because the property was bought by the incorporators before stimulation and sold to corporation after stimulation, thus refusing to treat the corporation as a separate entity. Transcript 28.

No question of the fairness of the sale from incorporators to corporation has ever been raised. By comparing claim with cost of property to incorporators (Transcript 27) it appears they turned in property to corporation at the exact cost to them, corporation assuming unpaid purchase price.

IV.

As a matter of law the corporation must be treated as separate from its stockholders. See cases in original brief.

V.

If this fiction of separate identity were disregarded, then under facts of this case justice and equity require it be treated as separate.

(a) The "big operation" of the property for which the corporation was formed was directly induced and procured by the Secretary. Transcript 17.

(b) The Secretary procured the money to be loaned to the corporation (not by stockholders) on which corporation operated and which was lost. Transcript 17.

(c) The Secretary used his "full influence" to bring about the enterprise. Transcript 22-23.

(d) In spite of compensation allowed by War Minerals Relief Act these losses can never be made good. Transcript 23.

Hence if the corporate veil is pierced the parties legally at interest are not the stockholders but the unpaid lenders who were induced by the Secretary to put their money into the enterprise.

Respectfully submitted,

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